

Hon. Jamal N. Whitehead

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA A. DIEMERT, an individual,

Plaintiff,

v.

THE CITY OF SEATTLE, a municipal
corporation,

Defendant.

Civil Action No. 2:22-cv-01640-JNW

**DECLARATION OF
LAURA M. D'AGOSTINO IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

I, Laura D'Agostino, declare as follows:

1. I am an attorney at Pacific Legal Foundation, a public interest law firm. I am counsel of record Plaintiff, Mr. Diemert. I submit this Declaration in Support of Plaintiff's Opposition to the City's Motion for Summary Judgment. The following facts are within my personal knowledge or based on documents and, if called as a witness herein, I can and will competently testify thereto.
2. Attached hereto as **Exhibit 1** are true and accurate copies of Joshua Diemert's job applications submitted to the City of Seattle.

- 1 3. Attached hereto as **Exhibit 2** is a true and correct copy of the internet page describing
2 Mr. Diemert's "maximum achievement award."
- 3 4. Attached hereto as **Exhibit 3** is a true and correct copy of the December 28, 2015 email
4 Mr. Diemert sent to Kate Garrow, a PROTEC17 representative, regarding the issues Mr.
5 Diemert was experiencing as an employee within the Human Services Department
6 (HSD).
- 7 5. Attached hereto as **Exhibit 4** is a true and correct copy of the email forwarded to HSD
8 staff by Ron Mirabueno.
- 9 6. Attached hereto as **Exhibit 5** is a true and correct copy of the chat message Mr. Diemert
10 received via one of his public records requests regarding Consuelo Crow making
11 discriminatory remarks against "white people."
- 12 7. Attached hereto as **Exhibit 6** is a true and correct copy of the types of materials regularly
13 disseminated within the workplace.
- 14 8. Attached hereto as **Exhibit 7** is a true and correct copy of the June 21, 2021 email Mr.
15 Diemert sent to Ryan Groce, Ms. Kilpatrick-Goodwill, and Mr. Mirabueno regarding
16 discrimination in the workplace, as well as true and accurate copies of other emails Mr.
17 Diemert sent as part of reporting his concerns of discrimination to the City.
- 18 9. Attached hereto as **Exhibit 8** is a true and correct copy of Mr. Diemert's performance
19 reviews.
- 20 10. Attached hereto as **Exhibit 9** is a true and correct copy of the Rebuttal Statement Mr.
21 Diemert prepared during his EEOC investigation.
- 22 11. Attached hereto as **Exhibit 10** is a true and correct copy of an email Mr. Diemert sent
23 regarding the racial discrimination he experienced from Shamsu Said.
- 24 12. Attached hereto as **Exhibit 11** is a true and correct copy of an email Mr. Diemert
25 received from Ms. Kilpatrick-Goodwill, directing him to include Mr. Said in Mr.
26 Diemert's emails about requesting leave.
- 27 13. Attached hereto as **Exhibit 12** is a true and correct copy of an email thread Mr.
28 Diemert sent regarding Ms. Kilpatrick-Goodwill's failure to support him.

1 14. Attached hereto as **Exhibit 13** is a true and correct copy of an email thread pertaining to
2 Ms. Kilpatrick-Goodwill's retaliation against Mr. Diemert and responses from coworkers
3 Rose Long and John Fields.

4 15. Attached hereto as **Exhibit 14** is a true and correct copy of the June 21, 2021 Mr.
5 Diemert sent to Mr. Groce regarding his concerns about discriminatory RSJI material in
6 the workplace, among other concerns.

7 16. Attached hereto as **Exhibit 15** is a true and correct copy of emails recounting Mr.
8 Diemert's experience with Tina Ng. Rudell and her failure to process Mr. Diemert's
9 leave requests.

10 17. Attached hereto as **Exhibit 16** is a true and correct copy of the Department of Labor
11 report finding that the City had violated Mr. Diemert's FMLA rights.

12 18. Attached hereto as **Exhibit 17** is a true and correct copy of Mr. Diemert's email
13 correspondence with Mr. Kuykendall and Mr. Zwerin regarding Mr. Diemert's HRIU
14 investigation.

15 19. Attached hereto as **Exhibit 18** is a true and correct excerpt of Mr. Diemert's written
16 answers to Defendant's First Set of Interrogatories, identifying the public records
17 requests he filed with the City.

18 20. Attached hereto as **Exhibit 19** is a true and correct copy of an email Mr. Diemert
19 received from the City of Seattle through one of his public records requests, in which a
20 white employee identifies the "divisive" nature of RSJI trainings and other discriminatory
21 attitudes in the workplace.

22 21. Attached hereto as **Exhibit 20** is a true and correct copy of an email sent by Tamar Zere
23 in which she states that a "white person" could attend "IRI," but that it would be an
24 "uncomfortable and unsafe experience for all the participants though."

25 22. Attached hereto as **Exhibit 21** is a true and correct copy of emails pertaining to Ukrainian
26 employees that were forced to leave a "BIPOC" designated trainings. Mr. Diemert also
27 received these through one of his public records requests.
28

23. Attached hereto as **Exhibit 22** is a true and accurate copy of Terry McLellan's October 26, 2018, memorandum in which she provides demographic data to different caucuses to show that fewer white people are being employed across different occupations in the City.

24. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts from the deposition of Joshua Diemert, taken on March 22, 2024.

25. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from the deposition of Chaney Kilpatrick-Goodwill, taken on February 6, 2024.

26. Attached hereto as **Exhibit 25** is a true and correct copy of excerpts from the deposition of Ryan Groce, taken on February 7, 2024.

27. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts from the deposition of Terry McLellan, taken on April 16, 2024.

28. Attached hereto as **Exhibit 27** is a true and correct copy of the draft response by the Human Resources Department of the Human Services Department to Joshua Diemert's EEOC Charge of Discrimination. This document was introduced as Exhibit 30 in the deposition of Ryan Groce taken on February 7, 2024, and authenticated by Mr. Groce at Groce Dep. 63:24-72:4.

29. Attached hereto as **Exhibit 28** is a true and correct copy of an email from Terry McLellan regarding the City's rejection of Mr. Diemert's request to start a non-racial affinity group. This document was introduced as Exhibit 150 in the deposition of McLellan taken on April 17, 2024, and authenticated by Ms. McLellan at McLellan Dep. 77:3-78:23.

30. Attached hereto as **Exhibit 29** is a true and correct copy of emails from Joshua Diemert to Chaney Kilpatrick-Goodwill, Ron Mirabueno, and Ryan Groce, among others, regarding Kilpatrick-Goodwill's delays in approving the installation of software on his computer and Mr. Diemert's concerns about the City's incomplete and biased investigation of his claims of racial discrimination and harassment. This document was introduced as Exhibit 25 in the deposition of Diemert taken on March 22, 2024 at Diemert Dep. 323:16-324:24.

31. Attached hereto as **Exhibit 30** is true and correct copy of an email exchange among Steve Zwerin, Brandon Kuykendall, and Ryan Groce regarding another complainant and the recommendation to conduct a Director Initiated Investigation. This document was introduced as Exhibit 132 in the deposition of Terry McLellan taken on April 16, 2024.
32. Attached hereto as **Exhibit 31** is true and correct copy of a summary of the Executive Order by The City of Seattle Mayor regarding harassment and discrimination policies, including the use of independent investigations when a complaint is filed regarding personnel within the Investigation Unit. This document was introduced as Exhibit 131 in the deposition of Terry McLellan taken on April 16, 2024.
33. Attached hereto as **Exhibit 32** is a true and correct copy of The City's Alternative Work Arrangement Guidelines, which require that race equity be a major factor in deciding an employee's alternative work arrangement. This document was introduced as Exhibit 45 in the deposition of Ryan Groce taken on February 7, 2024, and authenticated by Mr. Groce at Groce Dep. 134:24-137:18.
34. Attached hereto as **Exhibit 33** is a true and correct copy of a group chat in which Chaney Kilpatrick-Goodwill was a participant. This document was introduced as Exhibit 1 in the deposition of Chaney Kilpatrick-Goodwill taken on February 6, 2024.
35. Attached hereto as **Exhibit 34** is a true and correct copy of a declaration prepared by Jennifer Yost, a former HSD employee, regarding the racially hostile work environment she experienced.
36. Attached hereto as **Exhibit 35** is a true and correct copy of excerpts from the deposition of Jason Johnson, taken on February 7, 2024.
37. Attached hereto as **Exhibit 36** are true and accurate copies of complaints of discrimination occurring within the Human Services Department.
38. Attached hereto as **Exhibit 37** are true and accurate copies of the Human Resource Investigation Unit's Reports drafted as part of the investigation into Mr. Diemert's complaints.

39. Attached hereto as **Exhibit 38** is a true and correct copy of excerpts from Joshua Diemert's second deposition taken on June 12, 2024.

40. Attached hereto as **Exhibit 39** is a true and correct copy of excerpts from the deposition of Brian Sharkey, taken on April 15, 2024.

41. Attached hereto as **Exhibit 40** is a true and correct copy of the discussion between Mr. Diemert and Ed Odom.

42. Attached hereto as **Exhibit 41** is a true and correct copy of the email thread between Rosalind Brazel and Jason Edens in which they make threatening and discriminatory remarks against Mr. Diemert among themselves.

43. Attached hereto as **Exhibit 42** is a true and correct copy of an email from Ryan Groce regarding protection of Shamsu Said in relation to Joshua Diemert. This document was introduced as Exhibit 43 in the deposition of Ryan Groce taken on February 7, 2024, and authenticated by Mr. Groce at Groce Dep. 124:3-15.

DATED: Sept. 6, 2024.

s/ Laura M. D'Agostino
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** Pro hac vice*